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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,337	12/09/2003	Joseph A. Costanzo	7175-74032	3550
23643	7590	06/29/2004	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			VENIAMINOV, NIKITA R	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,337	<b>Applicant(s)</b> COSTANZO, JOSEPH A.	
	<b>Examiner</b> Nikita R Veniaminov	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 19-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/11/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species A: Figures 2-14; Species B: Figures 15-16 and Species C: Figure 17.
2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the

record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Dilip A. Kulkarni on June 22, 2004 a provisional election was made without traverse to prosecute the invention of Species A, claims 17-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

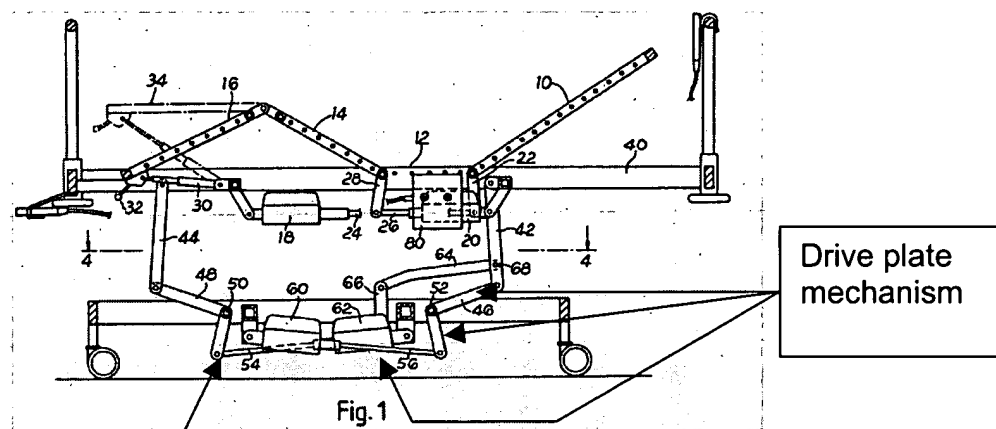
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayes et al. (US 5,205,004) cited by Applicant. Hayes et al. ('004) teach an infant support for an incubator or a warmer or a combination thereof, the support comprising: a support surface having a head end and a foot end [see Figure 1 (10, 12, 14 and 16)]; first and second elevators movable between raised and lowered positions, and coupled to the head end and the foot end (see Figure

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1 (42 and 44); column 2, lines 66-68 and column 3, lines 1-8), respectively; a driver movable in first and second directions [see Figure 1 (60 and 62)]; and first and second drive plate mechanisms,



each drive plate mechanism being coupled to the driver, the first drive plate mechanism being configured to move the first elevator to the raised position when the driver is moved in the first direction, and the second drive plate mechanism being configured to move the second elevator to the raised position when the driver is moved in the second direction [see Figure 2 (54 and 56)]; wherein the first and second drive plate mechanisms each comprise a drive plate having an outwardly extending member [see Figure 1 (54 and 56)] and a driven plate having a corresponding outwardly extending member (see Figure 1 (46 and 48) and column 3, lines 2-14).

***Allowable Subject Matter***

6. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art, either alone or in combination, teaches or suggests teach an infant support for an incubator or a warmer or a combination thereof, the support comprising either a drive plate, wherein each member of each drive plate is selectively engageable with each corresponding member of each driven plate of the first and second drive plate mechanisms for moving the corresponding first and second elevators between the raised and lowered positions; or a first lifting mechanism coupled to a first elevator and a first drive plate mechanism and a second lifting mechanism coupled to a second elevator and a second drive plate mechanism, each lifting mechanism comprising a plurality of spools and a belt coupled to the spools and the respective elevator, one of the spools being coupled to the respective drive plate mechanism to move the respective elevator between raised and lowered positions.
7. Claims 19-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kurrasch ('208); Carlson ('670); Kitamura ('603) and Shulenberger ('135).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikita R Veniaminov whose telephone number is (703) 605-0210. The examiner can normally be reached on Monday-Friday 8 A.M.-5 P.M..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



June 21, 2004.

Nikita R Veniaminov  
Examiner  
Art Unit 3736



ERIC F. WINAKUR  
PRIMARY EXAMINER